DEC 20 1999 (6)

No. 99-6723

Supreme Court, U.S.
FILED
DEC 20 1999
OFFICE OF THE CLERK

In The
Supreme Court of the United States

ANTHONY BRADEN BRYAN,

Petitioner,

vs.

MICHAEL MOORE, Secretary,
Florida Department of Corrections,

Respondent.

On Writ Of Certiorari
To The Supreme Court Of Florida

BRIEF OF THE AMERICAN BAPTIST CHURCHES; AMERICAN FRIENDS SERVICE COMMITTEE; THE AMERICAN JEWISH COMMITTEE; THE AMERICAN JEWISH CONGRESS; THE BAPTIST PEACE FELLOWSHIP OF NORTH AMERICA; THE CHRISTIAN CHURCH (DISCIPLES); THE CONCERNED BLACK CLERGY; JUDY MILLS REIMER AS EXECUTIVE DIRECTOR OF THE CHURCH OF THE BRETHREN GENERAL BOARD; THE EVANGELICAL LUTHERAN CHURCH IN AMERICA; THE NATIONAL COUNCIL OF CHURCHES; CLIFTON KIRKPATRICK AS STATED CLERK OF THE GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH (U.S.A.); THE REFORMED CHURCH IN AMERICA; THE REORGANIZED CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS; THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE; THE UNITARIAN UNIVERSALIST ASSOCIATION; THE UNITED CHURCH OF CHRIST; AND GENERAL BOARD OF MINISTRIES OF THE UNITED METHODIST CHURCH; AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

STEPHEN C. BAYLISS*
THOMAS H. DUNN
303 Elizabeth Street, N.E.
Atlanta, Georgia 30307
(404) 222-9202
**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTIONS PRESENTED

1. Did the Florida Supreme Court's appraisal of the likelihood that Mr. Bryan will suffer needless agony and degradation when he is put to death by Florida's electric chair violate the Eighth Amendment by disregarding a constitutionally unacceptable risk of physical violence, disfigurement and torment?

2. Did the Florida Supreme Court err in concluding that the record as a whole insufficiently sustains Mr. Bryan's contention that his execution by Florida's electric chair unnecessarily exposes him to physical suffering and degradation in violation of the Eighth Amendment?

3. Following the documented, repeated malfunctioning of Florida's electric chair, resulting in ghastly spectacles of violent disfigurement, did the Florida Supreme Court err in rejecting Mr. Bryan's contention that his being subjected to execution by such means constitutes wanton psychological and moral cruelty that violates the Eighth Amendment?

4. Did the Florida Supreme Court err in determining that the presence or absence of conscious pain once electrocution begins is the only factor which determines whether or not Florida's electric chair constitutes cruel and unusual punishment under the Eighth Amendment?

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STATEMENT OF INTEREST OF AMICI CURIAE

Amici listed and described below are national religious bodies, judicatories, or organizations of the Protestant and Jewish faiths.[1] Amici believe that whatever one may think of the imposition of capital punishment generally, and we oppose it,[2] the notion of executing persons by electrocution violates contemporary standards of decency and the basic dignity of humanity. While Amici endorse many of the arguments presented in Petitioner's and in the other amicus briefs, we present herein additional arguments distinctive to our own interests. Amici are interested in the issue before the Court because of:

(1) a common and traditional calling to be intimately involved with society in positive ways so as to discover and advance the "evolving standards of decency that mark the progress of a maturing society." *Troy v. Dulles*, 356 U.S. 86, 101 (1958), and to help ensure that the criminal justice system reflects those standards;

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[1] Amici file this brief in support of Petitioner by written consent of all parties pursuant to rule 37.2 of the Rules of the Court and the parties' letters of consent are on file with the Clerk of the Court.

[2] Amici's statements opposing capital punishment are compiled in the following publications: G. Hanks, *Against the Death Penalty, Christian and Secular Arguments Against Capital Punishment* (Scotsdale: Herald Press, 1997); American Friends Service Committee, "The Death Penalty: The Religious Community Calls for Abolition" (Philadelphia: AFSC, 1998).

(2) a recognition that it is Amici's responsibility when the Court explores the national consensus regarding the legal and moral decency of executing persons by electrocution, to provide the Court with the religious community's collective experiences and beliefs which counsels against execution by electrocution; and

(3) united opposition to the imposition of capital punishment, especially by electrocution, because it is cruel and unusual and because capital punishment as it is applied in the United States is contrary to the highest – and even the simplest – moral teachings of our traditions.

Amici are:

1. THE AMERICAN BAPTIST CHURCHES IN THE U.S.A. consists of 5,800 churches with a membership of 1.5 million.[3] In 1958 and 1966, the American Baptist convention, a representative body of the denomination, adopted a resolution, subsequently affirmed by the American Baptist Churches in 1980 and 1982, calling for the abolition of capital punishment, in part based on the conviction that "the emphasis in penology should be upon the process of creative, redemptive rehabilitation, rather than on primitive retribution."

2. THE AMERICAN FRIENDS SERVICE COMMITTEE (AFSC), as an expression of the Religious Society of Friends (Quakers) in America, since 1917 has been active in works of humanitarian relief and service. The AFSC

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[3] Membership numbers are approximate and have either been provided by the respective *amicus* or taken from Eileen W. Linder, ed., *Yearbook of American & Canadian Churches: 1999* (Nashville: Abingdon Press, 1999).

has a vital interest in this litigation because of Friends' historic and continued opposition to the taking of human life by the State. AFSC embraces the "biblical teaching that every human life is valuable in the sight of God, that man need not remain in his sinful state but can repent and be saved, that God loves the sinner and takes no pleasure in the death of the wicked, but longs that the wicked turn from their ways and live."

3. THE AMERICAN JEWISH COMMITTEE (AJC) is a national organization of approximately 100,000 members and supporters, was founded in 1906 to protect the civil and religious rights of Jews. It is the conviction of the AJC that those rights will be secure only when the rights of all Americans are equally secure. AJC opposes the imposition of capital punishment, which it believes is "cruel, unjust and incompatible with the dignity and self respect of humanity."

4. THE AMERICAN JEWISH CONGRESS is an organization of American Jews founded in 1918 to protect the political, civil, religious, and economic rights of American Jews. It believes that those rights are best protected by vigorous enforcement of the Bill of Rights, and that the Constitution must be interpreted in light of the evolving needs of society. It has filed numerous briefs in this Court, including several relating to capital punishment.

5. THE BAPTIST PEACE FELLOWSHIP OF NORTH AMERICA links individuals and congregations throughout the United States, Canada, Puerto Rico and Mexico who believe that "doing justice" and "loving mercy" are intimately tied to "walking humbly with God." Their

quarterly journal, *Baptist Peacemaker*, is circulated to over 8,000 people. The Baptist Peace Fellowship assists a broad constituency in efforts to organize locally, nationally, and internationally on a host of justice, peace, reconciliation and human rights issues. Baptist Peace Fellowship periodicals and publications have on numerous occasions carried articles sharply critical of the use of the death penalty in the United States and in support of restorative justice alternatives.

6. THE CHRISTIAN CHURCH (DISCIPLES OF CHRIST) has over 3,800 churches with a membership of almost 1 million. Since 1962 and most recently in 1985, the General Assembly, a voting representative body of the Church, adopted a resolution opposing the imposition of capital punishment and instead favoring a program of rehabilitation for criminal offenders noting that "the Holy Scriptures clearly mandate that we are not to kill, we are not to render evil for evil, and that we are not to seek retribution with vengeance for the evil done to us."

7. JUDY MILLS REIMER AS EXECUTIVE DIRECTOR OF THE CHURCH OF THE BRETHREN GENERAL BOARD. The Church of the Brethren has affirmed "the sanctity of human life" and opposed capital punishment since 1957. At its Annual Conference in 1987, the Church of the Brethren adopted a statement that "the death penalty only continues the spiral of violence." The statement further noted that "Jesus came with a message of redemption and compassion for life, while the death penalty carries a message of condemnation and death."

8. THE CONCERNED BLACK CLERGY OF METROPOLITAN ATLANTA, INC. (CBC) was conceived in

the mind of a group of socially-conscious African-American pastors fifteen years ago. The organizational meeting was called by Dr. Joseph Lowery, then President of the Southern Christian Leadership Conference and Dr. Cameron Alexander, President of the Georgia General Missionary Baptist Convention. Since its inception, the CBC has evolved into an organization which educates the masses relative to legislative policies which threaten the stability of working class neighborhoods, establishes programs that speak to the plethora of needs and concerns in African-American communities, and creates opportunities for relationship-building between clergy and lay, male and female, Blacks and Whites. CBC is an interfaith, interdenominational, inclusive, non-partisan organization which consciously pursues justice for all of God's people. The CBC opposes capital punishment in any form.

9. THE EVANGELICAL LUTHERAN CHURCH IN AMERICA (ELCA) is the largest Lutheran denomination in North America and the fifth largest Protestant church body in the United States. The ELCA has approximately 11,000 member congregations, which in turn has approximately 5.2 million individual members nationwide. In its 1991 Social Statement on the Death Penalty, the ELCA urged the abolition of the death penalty. The ELCA believes that "the message conveyed by an execution, reflected in the attention it receives from the public, is one of brutality and violence."

10. THE NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A. is the preeminent expression in the United States of the movement toward Christian unity. The Council is a "community of communions" composed of 35 national religious bodies in the United

States having an aggregate membership of 52 million. The Council is governed by a Governing Board elected by the member communions in proportion to their size and support of the Council. The Governing Board adopts policy statements and resolutions that express its views on moral and spiritual issues and govern the operation of the program units of the Council. Among these have been three statements in opposition to the death penalty, adopted in 1968, 1976, and 1979. The 1968 Policy statement adopted unanimously, was based in part on the "Christian commitment to seek the redemption and reconciliation of the wrong-doer, which are frustrated by his execution."

11. CLIFTON KIRKPATRICK AS STATED CLERK OF THE GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH (U.S.A.) is the senior continuing officer of the highest governing body of the Presbyterian Church (U.S.A.). The Presbyterian Church (U.S.A.) is the largest Presbyterian denomination in the United States, with approximately 2,750,000 active members in 11,500 congregations organized into 174 presbyteries under the jurisdiction of 16 synods. The General Assembly does not claim to speak for all Presbyterians, nor are its deliverances and policy statement binding on the membership of the Presbyterian Church. The General Assembly is the highest legislative and interpretive body of the denomination, and the final point of decisions in all disputes. As such, its statements are considered worthy of the respect and prayerful consideration of all the denomination's members. Since 1959, the Presbyterian Church (U.S.A.) and its predecessor bodies have declared that capital punishment cannot be condoned by an interpretation of

the Christian Bible. General Assemblies since 1959 have continued to declare that capital punishment is " . . . an expression of vengeance which contradicts the justice of God on the cross. . . . " The Stated Clerk urges this Court to find that capital punishment by electrocution violates the Eighth and Fourteenth Amendments to the United States Constitution as well as contemporary standards of decency.

12. THE REFORMED CHURCH IN AMERICA was established in 1628, is the oldest Protestant denomination with a continuous ministry in North America and has a membership of 300,000. The Reformed Church in America opposes "the retention of capital punishment as an instrument of justice," and believes that "capital punishment is incompatible with the spirit of Christ and the ethic of love" and "perpetuates the concepts of vengeance and retaliation."

13. THE REORGANIZED CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS was founded in 1830. The Church's headquarters is in Independence, Missouri, and is established in 37 countries. In 1995, the Standing High Council adopted a statement on the death penalty explaining that "it is a faithful reflection of life and the teachings of Jesus Christ, whom we proclaim, to encourage society not to use capital punishment as a penal response to crime." The statement further declared that "capital punishment of a person convicted of a crime is an unsatisfactory response which demeans and brutalizes society."

14. THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE (SCLC) is a non-profit civil rights organization founded in 1957 by Dr. Martin Luther King, Jr. and other civil rights ministers with the stated purpose of redeeming the soul of America by furthering Christian values and upholding the rights of the poor. SCLC has 90 chapters and 50,000 members across the country. Throughout the course of its history, SCLC has conducted workshops and seminars, held rallies and demonstrations and passed resolutions opposing the death penalty. SCLC holds that the death penalty is racially and economically biased and is merely a tool of oppression.

15. THE UNITARIAN UNIVERSALIST ASSOCIATION has over 1,000 congregations in the United States. The Unitarian Universalist Association has opposed capital punishment through its General Assemblies since 1961. Its 1979 General Resolution declared "capital punishment as inconsistent with respect for human life."

16. THE UNITED CHURCH OF CHRIST (UCC) has over 6,000 churches with a membership of 1.4 million. In 1979, the 12th General Synod of the UCC reaffirmed the declarations of earlier Synods in opposition to the death penalty, stating that "opposition is based on our understanding of the Christian Faith and the New Testament's call to redemptive love, mercy, and sanctity of life. . . . " In 1999, the 22nd General Synod, even as public opinion currently is supporting the death penalty, reasserted it opposition to capital punishment.

17. THE GENERAL BOARD OF GLOBAL MINISTRIES OF THE UNITED METHODIST CHURCH is a missional instrument of the United Methodist Church.

Among the varied responsibilities of the General Board of Global Ministries, are 1) "to engage in direct ministries to human need, both emergency and continuing, institutional and noninstitutional, however caused; and 2) to work within societies and systems so that full human potential is liberated and to work toward the transformation of demonic forces which distort life. The United Methodist Church has 36,000 churches with 8.4 million members across the globe. The United Methodist Church has a long history of concern for social justice. Its members have taken forthright positions on controversial issues involving Christian principles. The Social Principles are a prayerful and thoughtful effort to speak to the human issues in the contemporary world from a sound biblical and theological foundation. The Social Principles of the United Methodist Church call for "the creation of genuinely new systems for the care and support of the victims of crime and for rehabilitation that will restore, preserve, and nurture the humanity of the imprisoned;" condemns "torture of persons by government for any purpose" and asserts that torture violates Christian teachings. The 1980 General Conference of the United Methodist Church reaffirmed its opposition to the imposition of capital punishment, stating, "The United Methodist Church cannot accept retribution or social vengeance as a reason for taking human life. It violates our deepest belief in God as the creator and the redeemer of humankind," and in 1984, further stated, "Capital punishment . . . is contrary to our belief that sentences should hold within them the possibility of reconciliation and restoration." The 1996 General Conference of the United Methodist

Church urged that capital punishment be eliminated from all criminal codes.

ARGUMENT

THERE IS A SOCIETAL MORAL CONSENSUS THAT EXECUTION BY ELECTROCUTION VIOLATES CONTEMPORARY STANDARDS OF DECENCY AND THE BASIC DIGNITY OF HUMANITY AND THUS IS CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS

This Court has "held repugnant to the Eighth Amendment punishments which are incompatible with 'the evolving standards of decency that mark the progress of a maturing society.' " *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion). Moreover, this Court has indicated that contemporary society's attitude toward a particular punishment should be measured by as much objective evidence as possible. *Penry v. Lynaugh*, 492 U.S. 302, 331 (1989). Amici believe that the moral position of religious and faith-based organizations is an objective factor that this Court should consider in assessing contemporary community standards. An additional factor this Court has considered in deciding whether a punishment violates the "evolving standards of decency" has been whether the alleged form of punishment violated "the dignity of man." *Trop v. Dulles*, 356 U.S. 86, 100 (1958) (plurality opinion). All of this the law demands, because of common sense and the teachings of the ages. Amici believe and will show that because of these considerations, there

is a societal and moral consensus that execution by electrocution violates contemporary standards of decency and the dignity of humanity.

A. Religious Groups and Faith-Based Organizations Are Traditionally Relied Upon by Framers of Public Policy and Thus, Well Suited to Provide Indicators of Contemporary Standards of Decency

The religious community traditionally has played a pervasive and dominant role in the formation of the American social conscience. Churches and synagogues have insistently and persuasively called not only upon their own people but also upon all citizens to form a more just and humane society. Not content merely to reflect the mores and prejudices of the imperfect human community, religious leaders – both clergy and lay – have represented, articulated and reflected the impulse of the human spirit towards justice, compassion, and correct conduct. The religious community routinely enlivens and enlightens public debate on matters presenting basic issues in American society. Indeed, since the earliest times, religion has been "woven into the underlying texture of American politics." A.J. Reichley, *Religion in American Public Life* 169 (Washington, D.C.: Brookings Institute, 1985).

Religion's stewardship of moral values has led to new definitions of what is right and wrong in public policy, flowing from insights voiced by emerging religious movements. Religiously inspired movements have been instrumental in many social reforms in the United

States. "[C]hurch and religious groups in the United States have long exerted powerful political pressures on state and national legislatures, on subjects as diverse as slavery, war, gambling, drinking, prostitution, marriage, and education." *McDaniel v. Paty*, 435 U.S. 618, 641 n.25 (1978) (Brennan, J., concurring) (quoting L. Tribe, American Constitutional Law, IST ed., 866-67). In short, the religious community frequently speaks to policy-makers about evolving standards of decency, policy-makers listen, and public policy changes.

The central issue presented by the instant cases is also a matter of great social and religious importance – whether there is a societal consensus that it is morally, and thus constitutionally, offensive to execute a person by electrocution. As this Court has insisted, that inquiry must be determined by reference to the "evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 365 U.S. at 101. The identifying standard

> should not be, or appear to be, merely the subjective views of individual justices; judgment should be informed by objective factors to the maximum possible extent. To this end, attention must be given to public attitudes concerning a particular sentence. . . .

Coker v. Georgia, 433 U.S. 584, 592 (1977). Amici – religious judicatories, organizations, and agencies of major Protestant and Jewish denominations in the United States – are, as in other areas of public policy, in a unique and important position to reflect public attitudes concerning execution by electrocution.

In the twentieth century, the policy statements of religious bodies in the United States have come to represent the product of a significant and highly developed process that brings together biblical, theological, social science expertise with representative deliberation. The policy statements generally are the result of a long and careful process of study in which experts from theological, ethical and various technical fields, meeting over a period of years with program specialists in the denominations, research a given problem-area, prepare analyses, and draft proposed policies for the religious body. The result of this process is a well-considered and definitive statement combining the contributions of experts and the scrutiny and discussion of a widely-representative deliberative process. As such, it represents a deliberate and informed consensus.

Through such deliberative processes, a large majority of religious bodies or organizations in the United States have expressed their opposition to the imposition of capital punishment in the United States.[4] Amici are

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[4] In addition to Amici, the following religious bodies and faith-based organizations have expressed their opposition to capital punishment: The Bruderhof Communities, Church Woman United, The Protestant Episcopal Church U.S.A., Fellowship of Reconciliation, The Mennonite Central Committee, The General Conference Mennonite Church, The Moravian Church in America, The Orthodox Church in America, The Union of American Hebrew Congregations, The United States Catholic Conference, and National Board of the Y.W.C.A. G. Hanks, *Against the Death Penalty, Christian and Secular Arguments Against Capital Punishment* (Scotsdale: Herald Press, 1997); American Friends Service Committee, "The Death Penalty: The Religious Community Calls for Abolition" (Philadelphia: AFSC, 1998).

particularly well-suited to inform the Court of the evolving standards of decency in society with regard to the use of electrocution as a means of execution. Amici have acted upon their moral authority and their moral responsibility to take the lead in opposing the death penalty. Our moral opposition comes from many different religious perspectives but coalesces into several core principles: 1) that capital punishment is contrary to the respect for life and the dignity of humanity; 2) that capital punishment is destructive and merely represents retribution, vengeance and retaliation; and 3) that capital punishment is a violent response to violence which demeans and brutalizes society.

B. Executing a Person by Electrocution Is the Gratuitous Infliction of Suffering, Degradation and Mutilation and Is Violative of the Dignity of Humanity and Contemporary Standards of Decency

This Court has determined that the Eighth Amendment prohibition against cruel and unusual punishment "proscribes more than physically barbarous punishments. The Amendment embodies 'broad and idealistic concepts of dignity, civilized standards, humanity, and decency . . . ,' against which we must evaluate penal measures. Thus, we have held repugnant to the Eighth Amendment punishments which are incompatible with 'the evolving standards of decency that mark the progress of a maturing society' or which 'involve the unnecessary and wanton infliction of pain.' " *Estelle v. Gamble*, 429 U.S. 97. 102 (citations omitted). "[T]he [Eighth] Amendment has been interpreted in a flexible and dynamic manner." *Gregg v.*

Georgia, 428 U.S. 153, 171 (1976). As concepts of civility and dignity evolve, so do the limits of what constitutes cruel and unusual punishment. *See Trop v. Dulles*, 356 U.S. at 100. Accordingly, issues concerning cruel and unusual must be evaluated "in light of contemporary human knowledge," *Robinson v. California*, 370 U.S. 660, 666 (1962), rather than "in reliance on century-old factual premises that may no longer be accurate." *Glass v. Louisiana*, 471 U.S. 1080, 1083 (1985) (Brennan, J., dissenting from denial of certiorari).

Execution by electrocution is repugnant to contemporary moral "concepts of dignity, civilized standards, humanity, and decency." *Estelle v. Gamble*, 429 U.S. at 102. Death in the electric chair is an especially horrendous, degrading and violent death that always results in mutilation of the human body. *Provenzano v. Moore*, Case No. 95973, 1999 WL 756012, at 19* (Fla.) (Shaw, J., joined by Anstead, J., September 28, 1999, dissenting) ("Not only was every execution in Florida accompanied by the inevitable convulsing and burning that characterizes electrocution, but further, three executions in particular were marred by extraordinary violence and mutilation") (footnote omitted). The pre-execution protocol of shaving the condemned's head and leg are uniquely degrading to this form of execution.[5] The electrical force administered to the condemned's body results in violent convulsions,

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[5] The Eighth Amendment prohibition against punishments violative of the dignity of man can be violated by the process leading up to an execution. *Wilkerson v. Utah*, 99 U.S. 132, 135 (1878) ("prisoner was drawn or dragged to the place of execution").

thrusting the condemned's body against the chair and the restraining straps. Execution by electrocution results in the burning of the human body which is disfiguring and grotesque. "Halo burns" on the scalp that go as deep as the skull, "arching burns" where the electricity exits and reenters the human body and "drip burns" caused by the superheated saline solutions are characteristic of executions by electrocution. This all occurs when the electrocution goes according to protocol.

The botched execution by electrocution results in even more extraordinary violence and mutilation as evidenced by recent experiences in Florida. Flames spewed from the heads of Pedro Medina and Jesse Tafero. *Provenzano v. Moore*, 1999 WL 756012 at *34 (Pariente, J., joined by Anstead, J., dissenting). The execution of Allen Davis "resulted in a bloody side show – a spectacle more befitting of a 'B' Hollywood movie than a state-sanctioned execution." *Id.* at *34 (Pariente, J., dissenting). Members of the Florida Supreme Court acknowledged that there are substantial risks of continued problems associated with Florida's electric chair. Chief Justice Harding acknowledged that "each time an execution is carried out, the courts wait in dread anticipation of some 'unforeseeable accident' that will set in motion a frenzy of inmate petitions and other filings." *Id.* at *5 (Harding, C.J., joined by Lewis, J., specially concurring). Justice Quince observed that "human error [ ] seems to plague this form of execution." *Id.* at *11 (Quince, J., joined by Wells, J., concurring).

These "ghastly" botched electrocutions only heighten the condemned's psychological suffering "in dread anticipation of some unforeseeable accident" during the

execution process. *Id.* at *5 (Harding, C.J., joined by Lewis, J., specially concurring). The condemned is tortured by fear of the horrific form "the human error that seems to plague this form of execution" will take during his execution. *Id.* at *11 (Quince, J., joined by Wells, J., concurring). Finally, there is no means of measuring the condemned's consciousness and feelings of pain during an electrocution in the electric chair and thus, no way of ensuring that the condemned is unconscious and feeling no pain. The condemned have been observed breathing after the electrical current has ceased. *Id.* at *34 (Pariente, J., dissenting). A method of execution so plagued by human error that it creates an unreasonable risk of pain violates the Eighth Amendment.

Amici are morally compelled to declare that "[e]xecution by electrocution – with its attendant smoke and flames and blood and screams – is a spectacle whose time has passed." *Id.* at *27 (Shaw, J., joined by Anstead, J. dissenting). Execution by electrocution is a punishment that offends the "evolving standards of decency that mark the progress of a maturing society," and is inherently at odds with the basic "dignity of man." *Trop v. Dulles*, 365 U.S. at 100, 101. National and international consensus rejects electrocution as a means of execution that comports with contemporary standards of decency. Only four states have retained electrocution as their sole means of capital punishment. Of the remaining countries in the world that still impose capital punishment, none employ electrocution. Both the Humane Society of the United States and the American Veterinarian Medical Association condemn electrocution as a means of euthanasia for animals. A society that finds the electrocution of

animals to be inhumane and uncivilized cannot condone such treatment of man as acceptable, decent and moral. As this Court has held, the cruel and unusual punishment clause "is not fastened to the obsolete, but may acquire meaning as public opinion becomes enlightened by a humane justice." *Weems v. United States*, 217 U.S. 349, 378 (1910).

In the context of contemporary moral standards, the electric chair is "inhumane and barbarous, – something more than the mere extinguishment of life." *In Re Kemmler*, 136 U.S. 436, 446-7 (1890). Electrocution, more than any other form of capital punishment still in use today, violates contemporary standards of moral decency and is incompatible with the dignity and self respect of man.[6] Electrocution conveys a message of brutality and violence which demeans society, the respect for life and the dignity of man who was created in the image of God. Continued use of the electric chair with its attendant ghastliness only contributes to the "culture of violence." Amici believe that capital punishment, in general, continues the spiral of violence. Continued use of the electric chair gives the perception of actually escalating the spiral of violence. The electric chair also involves "a culture of cruelty ("burn 'em", "fry 'em")" which is contrary to moral standards of decency. *Provenzano v. Moore*, 1999 WL 756012 at *29 (Anstead, J. joined by Shaw, J., dissenting).

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[6] Amici are morally opposed to capital punishment regardless of the form of execution. We feel compelled nonetheless to voice our moral outrage at the continued use of electrocution as a form of execution. In doing so, Amici are not condoning any other form of execution.

Moreover, the continued use of electrocution perpetuates and accentuates the concepts of retribution, vengeance and retaliation as it is apparent that electrocution has become a cruel, senseless and inhumane punishment "totally without penological justification." *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981). Amici believe that moral consensus rejects this form of execution.

The prohibition against the gratuitous infliction of suffering, degradation and mutilation is inextricably interwoven in the fabric of morality entertained by contemporary society. Compassion and the inherent dignity of each human person is the heart of religion. Whatever argument is used to support capital punishment, the gratuitous infliction of suffering, degradation and mutilation is "something more than the mere extinguishment of life." *In Re Kemmler*, 136 U.S. 436, 446-7 (1890). As noted by Justice Blackmun, this notion was supported "by our recognition that *painless*, post mortem punishments such as public display, drawing and quartering, and mutilation also violate the Eighth Amendment. *Wilkerson v. Utah*, 99 U.S. 130, 135-136 (1879)." *Campbell v. Wood*, 511 U.S. 1119, ___, 114 S.Ct. 2125, 2127 (1994) (Blackmun, J., dissenting from denial of cert.) (emphasis in original). Amici morally reject execution as a proper punishment in any case and by any means. Nevertheless, we also believe that execution by electrocution is especially morally indefensible as it involves the gratuitous infliction of suffering, degradation and mutilation. Punishments must be judged "in light of contemporary human knowledge." *Robinson v. California*, 370 U.S. 660, 665 (1962). Advances in science may alter the Eighth Amendment analysis of a given punishment. *Furman v. Georgia*, 408 U.S. 238, 430 (1972)

(Powell, J. dissenting) ("no court would approve any method of implementation of the death sentence found to involve unnecessary cruelty in light of presently available alternatives"). Amici believe that electrocution, like execution by burning at the stake and postmortem punishments such as public display, drawing and quartering, and mutilation – punishments that were in existence during our colonial era – is incompatible with "the dignity of man" which is the "basic concept underlying the Eighth Amendment." *Trop v. Dulles*, 356 U.S. at 100. Execution by electrocution is cruelty for the sake of cruelty. It makes a spectacle of our justice system and denigrates us as a moral community.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed.

Respectfully submitted,

STEPHEN C. BAYLISS
THOMAS H. DUNN
303 Elizabeth Street, NE
Atlanta, Georgia 30307
(404) 222-9202